
EVALUATOR MANUAL TRANSMITTAL SHEET

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| <u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders | <u>Transmittal No.</u> 10RM-07 |
| | <u>Date Issued</u> May 2010 |

Subject:

Reference Material – Complaints

Multiple Complaint Reports of the Same Incident – Clarification and procedures on when and how to handle multiple complaints on the same incident.

Reason for Change:

Add Section 3-2115

Make minor formatting changes to pages 20, 21, 22, 31, 32, 49 and 50.

Filing Instructions:

REMOVE – page 1, 20, 21, 22, 31, 32, 49 and 50

INSERT –pages 1, 9.1, 20, 21, 22, 31, 32, 49 and 50

Approved:***ORIGINAL DOCUMENT SIGNED BY
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3-2115 MULTIPLE COMPLAINT REPORTS OF THE SAME INCIDENT 3-2115

From time to time a Licensing Program Analyst may encounter multiple complainants reporting the same allegation. Whenever it appears that multiple complainants may be reporting the same allegation, the Licensing Program Analyst must analyze the reports to determine whether they are duplicates. Complaints are duplicates only if they are identical allegation(s). Identical means the same answers to the questions of who, what, where, why, when and how. This is important to ensure that all complaint allegations are investigated while at the same time utilizing resources efficiently.

Once it is determined that a complaint allegation is duplicated the assigned Licensing Program Analyst shall merge all information received from the latter complaint(s) with the original complaint on the Complaint Report (LIC 802).

1. The duplicate complainants and their contact info shall be added to the detail section (Page 2 of the original Complaint Report (LIC 802). All complainants shall be contacted for the pre and the post investigation follow up.
2. If a subsequent complainant reported an additional allegation(s) that wasn't already reported, then a separate complaint (LIC 802) shall be completed for the additional allegation(s).

Remember, as with all complaints, if requested, the complainant's confidential status is to be protected. This includes not revealing the complainant's identity to the other complainant even though they are both listed on the same Complaint Report (LIC 802).

**3-2331 SAMPLE LANGUAGE FOR COMPLAINTS FOR
COMMUNITY CARE FACILITIES ONLY****3-2331**

The following sample language does not apply to Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill or Child Care licensees.

The information listed below should be entered on the LIC 9099 as appropriate:

Sample A:

The following language will be used when the complaint investigation substantiates acts of physical or sexual abuse against clients:

(NAME(S) OF LICENSEE(S)) was informed that a complaint regarding client abuse was substantiated. (Complete the paragraph with information regarding the detail of the violation.)

“Pursuant to Health and Safety Code Section 1538.5(b)(1), within three days from the date of this report, the licensee must send by certified mail, copies of this Complaint Investigation Report (LIC 9099) to each client’s authorized representative. The licensee was informed that written proof (e.g., certified mail receipt) must be retained by the licensee at the facility for future review by the licensing agency.”

Sample B:

The following language will be used when three complaints for the same type of violations have been substantiated:

(NAME(S) OF LICENSEE(S)) was informed that three complaints for violations of _____ have been substantiated against the (NAME OF FACILITY). (Complete the paragraph with information regarding the detail of the violation.)

Pursuant to Health and Safety Code Section 1538.5(b)(2), by the date (ENTER DATE) agreed upon (between licensee and the licensing analyst), the licensee must send, by certified mail, copies of the Complaint Investigation Report (LIC 9099) to each client’s authorized representative. The licensee was informed that written proof (e.g., certified mail receipt) must be retained by the licensee at the facility for future review by the licensing agency.

Sample C:

The following language will be used when the licensee has failed to meet the obligation of sending a notice of substantiated complaints.

(NAME(S) OF LICENSEE(S)) has violated Health and Safety Code Section 1538.5(b)(_) [ENTER (1) or (2)] because he/she has failed to send notifications of substantiated complaints, by certified mail, for violation of (NATURE OF VIOLATION) to each client’s authorized representative, by the specified date (ENTER DATE).

(NAME(S) OF LICENSEE(S)) shall correct this deficiency by sending the notification of substantiated complaints by (ENTER DATE). If the deficiency is not corrected by (ENTER DATE), the Department will initiate civil penalty action against the licensee in accordance with Title 22, California Code of Regulations Section 80054.

3-2340 EXIT INTERVIEW**3-2340**

The purpose of the exit interview is to ensure that the licensee/administrator clearly understands the outcome of the investigation and what, if anything, is expected of him/her. When there is reasonable doubt and a need for further investigation, the analyst should explain that further evaluation and possible follow-up visits are necessary before making a decision regarding resolution of the complaint allegation(s). Remember, it is always better to take the time to gather all the required evidence/facts necessary to make a determination as opposed to reaching a resolution prematurely. In this case, the analyst will check the box on the LIC 9099, "Needs Further Investigation" and indicate an estimated time of completion, such as 30, 45, 60, or 90 days. The investigation should not exceed 90 days.

Before exiting a Certified Family Home, let the Certified Family Home parent(s) know that you will be reporting your findings to the Foster Family Agency and that the Certified Family Home parent(s) may contact the Foster Family Agency with any concerns or questions about the investigation.

When it has been established that the allegations are unfounded, the analyst should explain this to the licensee and document such on the LIC 9099. With the exception of unfounded complaints, the licensee may use space on the LIC 9099 to document his/her statement regarding the allegations as part of the public record. The licensee may also send a letter at a later date.

At a minimum, each deficiency should be discussed with the licensee/administrator and the analyst should obtain a specific Plan of Correction and due date. The Plan of Correction must be written on the LIC 9099 by the licensee/administrator. If the licensee refuses to write the Plan of Correction or is unable to, then the analyst should write it and document the reason it was completed by the analyst instead of the licensee.

At this time the analyst should advise the licensee/administrator that he/she may find it necessary to request an extension of the Plan of Correction due date. This is done by contacting the Licensing Program Manager (whose name appears on the LIC 9099) by telephone, FAX or in writing before the original Plan of Correction due date.

If the licensee/administrator disagrees with any application of regulation, the notice of deficiencies, the required Plan of Correction due date or any other finding of consequence related to this visit, he/she should be invited to write these disagreements on the LIC 9099 in the space provided for the Plan of Correction. The analyst should suggest that the individual read the paragraph entitled "Appeal Rights" on the back of the LIC 9099 or the analyst may use the opportunity to read and explain these rights. The licensee/operator should be advised further to include a written argument to support their side of the disagreement and submit any other supporting evidence.

3-2400 CLEARING THE COMPLAINT**3-2400**

After the investigation is completed and the Licensing Program Analyst has delivered the findings to the licensee, including citations, plans of correction, and possible immediate civil penalties (if violation substantiated), the Licensing Program Analyst must indicate the resolution for each allegation on the LIC 802 and complete the remaining sections. The Licensing Program Analyst shall complete all unfinished documentation (detail supportive forms, etc.) related to the complaint investigation as soon as possible after the findings are delivered to the licensee.

3-2400 CLEARING THE COMPLAINT (Continued)**3-2400**

Upon completion of all documentation, the Licensing Program Analyst submits the LIC 802 along with all associated documentation to the Licensing Program Manager for review via the Field Automation System.

Licensing Program Managers are responsible to review the complaint documentation to ensure there was a thorough investigation, the findings are appropriate, any related citations, plans of correction, and civil penalty assessments are appropriate, and that post-investigation contact with the complainant was followed through with as appropriate. If the Licensing Program Manager determines that other work, such as corrections or additional investigation, is necessary, the complaint will be returned to the Licensing Program Analyst via the Field Automation System with direction and a date for completion.

The Licensing Program Manager approves the complaint investigation and findings by signing the LIC 802 via Field Automation System. The Licensing Program Analyst is responsible for timely follow up to ensure the facility has completed their Plans of Correction. See Evaluator Manual Section 3-3605 Clearing the Deficiency.

The Licensing Program Analyst shall complete all complaint investigations and place a note of final conclusion in the department's facility file, regardless of whether the licensee voluntarily surrendered the license. The LIC 802 is filed in the confidential file and the LIC 9099 is filed in the public file, with the following exception: unfounded allegations for any Community Care Facilities or any Child Care Facilities are to be retained in the confidential file.

All references to Field Automation System apply to Community Care Licensing Division staff and do not apply to counties.

3-2600 COMPLAINTS ALLEGING ABUSE**3-2600**

Complaints alleging priority I or II situations involving children, clients, or residents are considered top priority and are to be handled expeditiously. The steps involved in abuse investigations differ from routine complaint investigations and should be carefully planned with the assistance of the supervisor.

The procedures in Evaluator Manual, Reference Material Sections 3-2602 through 3-2650, below, are to be used by all county licensing staff and Regional Offices. Regional Office staff must refer all allegations of serious abuse or suspicious deaths to Investigations Branch, as outlined in Evaluator Manual section 1-0620, Investigative Priorities. The referral procedures are to be followed prior to beginning the complaint investigation.

In addition, because they are Department licensing employees, analysts must comply with the requirements to report suspected abuse of children, dependent adults and elders. (Refer to the Licensing Program Manager Guidebook for general directions on Evaluators role as Mandated Reporters. Refer to Evaluator, Reference Material Section 4-0000, Abuse Reporting Requirements, for Child Care cases. See form PS 314 for thorough instruction, and procedure, regarding who must report abuse of dependent adults and elders.)

3-2605 ASSISTING OTHER INVESTIGATORY AGENCIES (Continued) 3-2605

This policy differs from the standard practice of explaining the purpose of the visit and the substance of the complaint during the entrance interview. Refer to Evaluator Manual section 3-2305, Entrance Interview. Whenever the allegations cannot be fully disclosed at the time of the visit, the analyst must inform the licensee that this information will be presented during a return visit. Refer to Evaluator Manual section 3-2640, Informing the Licensee of Complaint, for exceptions to the return visit.

3-2610 INVESTIGATING ALLEGATIONS OF ABUSE 3-2610

If no other agency is investigating the abuse incident, it becomes incumbent upon the licensing agency to initiate a course of action. Procedures for investigating cases of abuse differ somewhat from the routine complaint investigation process. These differences, which are identified below, are critical and must be agreed upon by the Licensing Program Manager:

1. Invoking the criteria for delaying the visit, unless the Regional Manager has determined that there would be significant risk to the clients if the exact nature of the allegations were disclosed;
2. Interviewing witnesses and victims prior to visiting the facility or Certified Family Home;
3. Obtaining declarations from witnesses and victims;
4. Withholding full disclosure of the substance of the complaint from the licensee or Certified Family Home parent(s) except for certain facility categories;
5. Deciding how the licensee will be informed of the investigative results.

Once the complaint has been assigned, the analyst should contact the complainant to obtain all the pertinent facts and details surrounding the allegation. If it appears the complainant has detailed knowledge of the allegations, an appointment should be made to discuss the complaint and obtain a declaration. During this initial contact it is important to obtain from the complainant the names, addresses and telephone numbers of any other witnesses.

Witnesses and victims should be interviewed in person and away from the facility premises when possible. These interviews should ideally take place prior to the analyst's first facility/Certified Family Home site visit. Because of the sensitivity of abuse investigations, a gender-appropriate co-worker should normally accompany the lead analyst to witness or conduct the interviews.

Unless prior approval has been obtained from the Deputy Director through the Program Administrator or Regional Manager or County Licensing Supervisor, do not use video tape equipment to record the interview and/or the evidence.

Photographs, however, are permitted unless the child or client objects. While use of audio equipment is not prohibited, it shall be used only with approval from the Regional Manager or County Licensing Supervisor. This will ensure that any legal technicalities will not be overlooked when recording the statements and interviews. For example, Penal Code Section 632 makes it a crime to record a confidential communication without the consent of all parties to the communication, by means of any electronic amplifying or recording device. This is the case whether the conversation is carried on face to face or over the telephone.

3-2610 INVESTIGATING ALLEGATIONS OF ABUSE (Continued)**3-2610**

In priority I and II situations to interview day care children, it is best to telephone the parents and set up an interview time and place that is convenient for them. When contacting the parents it is important not to alarm them or discuss too many details over the telephone. The analyst must properly identify him/herself and indicate he/she is conducting a complaint investigation against the day care facility where their child is enrolled and would like to talk to them in person as well as interview their child. The analyst should always obtain the parent's cooperation and permission before interviewing the child. If parents object to the interview, honor this objection. This does not mean that the complaint investigation stops. Continue the investigation. Interview other victims and witnesses. If appropriate cross refer the case to other agencies, such as Children's/Adult Protective Services, and/or the appropriate law enforcement agency. (See Evaluator Manual sections 3-2645, Notifying Resource and Referral Agencies, and 2650, Notifying the Local Long-Term Care Ombudsman.) If a parent denies permission to interview a child, immediately consult your Licensing Program Manager. Also, consult with the Department's Legal Division and/or Investigations Branch for advice and guidance on how to handle situations where permission to interview a child is denied by the parent(s).

If the victim and/or witnesses can only be interviewed at the facility or Certified Family Home, the interview shall take place in a private room away from the general activity of the facility staff, Certified Family Home parent(s), other children and clients. When interviewing the victim, refrain from asking questions that might easily upset or traumatize him/her.

The presence of a gender-appropriate co-worker/witness may be of some comfort to the victim, particularly if portions of the victim's body must be viewed. If clothing is covering the injuries on the victim's arms or legs, the victim's permission must be obtained before viewing the injury and, if the victim is able, he/she can roll up the sleeves or pant leg to display the injury. If the victim cannot remove the clothing, the gender-appropriate co-worker may assist. If the injuries are located on parts of the body normally covered by clothing (in keeping with conventional propriety) they may, with one exception, be viewed only to the extent that the victim feels comfortable and only with his/her consent or that of his/her parents or conservator authorized representative who must be present. This discretion does not apply to viewing those personal parts of the body traditionally covered by underwear/swimwear; thus, the analyst may not ever request to see injuries to the victim's genital areas or other parts of the body regarded as private.

Even if the victim is willing, the analyst may not request or allow the victim to completely disrobe. Never remove, nor ask the victim to remove, any bandages or dressings.

If the injuries, bruises or other identifiable marks are visible on parts of the body that are generally not covered (e.g., face, arms, hands, legs), a photograph of such evidence is permissible. Never take a picture if the victim objects. The victim's well-being takes precedence over data collection.

3-2628 SPECIAL REQUIREMENTS FOR INVESTIGATIONS OF ABUSE OR NEGLECT IN RESIDENTIAL FACILITIES (Continued) 3-2628

Contacts should be made with:

1. Placement agencies or authorized representatives for specific facility clients involved in the abuse allegation.
2. Local law enforcement regarding incidents at the facility and reported run-aways.
3. Medical, psychiatric and psychological professionals known to have contact with clients in the facility.

The Licensing Program Analyst or Investigator should discuss general facility conditions, perceptions regarding the quality of care at the facility, and concerns with any aspect of the facility's operation.

Typical questions will address:

1. Last contact with a child/client in placement.
2. Last visit to the facility site and physical observations.
3. Any complaints received from children/clients in care.

Care should be taken not to disclose any information regarding the investigation or expected licensing agency actions. Information obtained during the contacts will be included in the Statement of Facts. Since the processing of Temporary Suspension Order actions is done as rapidly as possible, these supplemental contacts need to be made immediately. If possible, the individual contacted should be asked to submit comments or concerns in writing. When time does not permit, telephone contact will be sufficient. This information should be documented on the Detail Supportive Information Form, LIC 812 or the Investigator's report.

If the information obtained indicates that actions would be taken to resolve the problem and minimize the risk to clients (i.e., removal of certain staff, increased supervision, relocation of dangerous clients), the Program Administrator and the attorney shall change the Temporary Suspension Order recommendation and seek other remedies.

The Deputy Director for the Children and Family Services Division (or his/her designee) will sign off on all Temporary Suspension Order actions involving children's residential facilities prior to the case coming to the Community Care Licensing Division Deputy Director. The assigned attorney will route the case through the Children and Family Services Deputy and will include information gathered from placement agencies and other professionals for program review. When there is disagreement between the two deputies regarding the action to be taken, the attorney will coordinate a meeting to resolve the issue.

**3-2630 MAKING THE DETERMINATION:
APPLYING THE PROPER STANDARD OF PROOF****3-2630**

The proper standard of proof for a Community Care Licensing administrative action seeking is ***preponderance of the evidence***. This means that 51 percent of the evidence must support a substantiated finding that the alleged sexual or physical abuse occurred. Put another way, preponderance of the evidence means that one body of evidence has more convincing force than the evidence opposed to it, i.e. an objective and reasonable review of all the evidence reveals that it is more likely than not that the alleged abuse occurred.

This standard is to be distinguished from two other standards of proof. The criminal standard requires evidence “beyond a reasonable doubt to a moral certainty” that the alleged abuse occurred. The “clear and convincing” evidentiary standard is generally applied in certain civil actions seeking termination of parental rights or revocation of professional licenses for doctors or dentists. Both of these standards impose a higher burden of proof than that required by the preponderance of the evidence standard.

NOTE: Investigations conducted by law enforcement in general apply the “beyond a reasonable doubt” standard in deciding whether to file criminal charges. Do not automatically assume, simply because law enforcement authorities decide not to prosecute, that sufficient evidence does not exist to pursue an administrative action under the preponderance of the evidence standard.

**3-2635 MAKING THE DETERMINATION: IS THE COMPLAINT
UNFOUNDED, INCONCLUSIVE, OR SUBSTANTIATED?****3-2635**

Once you have evaluated and weighed all of the evidence, you should be prepared to offer an opinion as to whether the complaint is unfounded, inconclusive or substantiated.

Unfounded: A finding that the complaint is ***unfounded*** means that the allegation is false, could not have happened, and/or is without a reasonable basis.

- A false allegation means that there is evidence that the allegation was fabricated. It could imply a lack of good faith in the initial report. For example, two credible witnesses provide statements that the person making the allegation admitted to them in separate conversations that the allegation was false, but that the person was making the allegation to retaliate against the alleged perpetrator for some reason.